SUBJECT: Congressional redistricting

COMMITTEE: Redistricting: committee substitute recommended

VOTE: 10 ayes — Uher, Jones, Earley, Finnell, Martinez, Moreno, Rodriguez, Russell, Seidlits, Wilson

5 nays — Blair, Craddick, Grusendorf, Marchant, McCollough

0 absent

BACKGROUND: (For additional background on redistricting, see House Research Organization Special Legislative Report Number 167, *Redistricting, Part Two: Procedures and Pitfalls*, March 15, 1991, and Special Legislative Report Number 169, *Redistricting, Part Three: The Voting Rights Act*, April 22, 1991.)

**Population equality.** The U.S. Supreme Court has held that a state's congressional districts must contain equal population "as nearly as practicable," requiring a state to make a good-faith effort to achieve absolute equality. If it can be shown that a state's plan falls short of precise population equality, to the extent that such is practicable, the state must show that the variances — no matter how small — were necessary to achieve some legitimate state objective. The disputed plan could be proved deficient by introduction of an alternative plan with a smaller range of population deviation or of evidence that minor changes would bring the disputed plan closer to equality.

**Political gerrymandering.** The Supreme Court also has ruled that redistricting plans with partisan "gerrymandering," or the drawing of oddly shaped districts to benefit a particular political party, are open to legal challenge even if the disputed districts meet the population-equality test. In *Davis v. Bandemer*, 478 U.S. 109 (1986), the court established a two-pronged test for invalidating a gerrymandered plan under the equal protection clause: (1) a showing of intentional discrimination against an identifiable political group and (2) a showing of consistent discriminatory dilution of that group's voting power.

Some experts say the *Bandemer* decision created a high hurdle for invalidating a redistricting plan on the basis of partisan gerrymandering, making it the most difficult of all redistricting challenges to prove. They say evidence of skewed results from several elections would be required before the Supreme Court would invalidate a plan. However, the court in 1988 was only one vote short of hearing arguments of a lower court decision that upheld a California congressional redistricting plan that had been challenged for partisan gerrymandering.

**Ideal Texas district.** According to the U.S. Bureau of the Census figures released on December 26, 1990, Texas' total population for redistricting purposes is 16,986,510. Texas has been allocated three additional congressional seats, for a total of 30. Based on these figures, the ideal district population under the state's congressional district plan would be 566,217 (total population divided by 30 districts).

**Census controversy.** Controversy has clouded the census data that is to be used in redistricting. On April 18 the census bureau conceded that it had failed to count 236,490 to 632,490 Texans in the 1990 census. But on July 15, 1991, Secretary of Commerce Robert Mosbacher announced that no adjustment would be made to its census figures. The U. S. Commerce Department, parent agency of the bureau, had agreed to decide whether it would adjust the 1990 census figures by July 15 as part of settlement of a federal lawsuit attacking the census for undercounting.

On February 7, 1991, lawyers from the Texas Civil Rights Project and the Mexican American Legal Defense and Educational Fund (MALDEF) filed two lawsuits in Texas — one in state court and one in federal court — seeking adjustment of the census figures for use in redistricting. The lawsuits seek to prevent government officials from using or releasing the unadjusted 1990 census count without compensating for the undercount of minorities. In June the suits were amended to include voting rights complaints against the House and Senate plans passed by the Legislature.

In the state suit, *Mena v. Richards*, Civ. Action No. C-454-91-F, District Judge Mario Ramirez of Hidalgo County on August 5 held a hearing on a motion by the plaintiffs seeking an injunction to prohibit the use of unadjusted census figures and to block implementation of redistricting plans

that do not comply with the equal-rights and due-process provisions of the Texas Constitution (Art. 1, secs. 3, 3a, 19 and 29). Judge Ramirez is expected to rule on the motion on Wednesday, August 21.

In the federal suit, *Mena v. Mosbacher*, Civ. Action No. B-91-018, two motions are pending before U.S. District Judge Filemon Vela: a defendant's' motion to dismiss the lawsuit and a plaintiff's motion for a temporary injunction forcing legislative plans to be readjusted. In June the plaintiffs amended the suit, seeking to invalidate the Legislature's House and Senate redistricting plans as violating the 14th Amendment to the U.S. Constitution (guaranteeing due process and equal protection of the law) and Sec. 2 of the Voting Rights Act (prohibiting discriminatory voting practices).

On August 14, 1991 U.S. District Judge Consuelo B. Marshall of the Central District of California directed the census bureau to provide the California Senate with the adjusted census figures withheld by Secretary of Commerce Mosbacher on July 15. The bureau has not turned over the figures and has appealed the decision to the 9th U.S. Circuit Court of Appeals in San Francisco.

**The federal Voting Rights Act.** In 1975 Texas came under the provisions of the federal Voting Rights Act, enacted by Congress in 1965 to protect the rights of minority voters to participate in the electoral process in Southern states. Two sections of the act — Sec. 2 and Sec. 5 — affect Texas redistricting. Sec. 2 prohibits any practice that dilutes minority voting rights in any state and sets out how such a violation may be proved. Sec. 5 requires advance federal approval (preclearance) of changes affecting voting rights in Texas and other states in which minority voting rights have been denied in the past.

Under Sec. 5, Texas redistricting plans must be "precleared" by the U.S. Department of Justice or the U.S. District Court for the District of Columbia. The state bears the burden of proving that a proposed change is not intended to deny or abridge voting rights on account of race, color or membership in a language-minority group nor has that effect. To be precleared, a redistricting plan must be drawn so that it will not reduce the opportunities of minority voters to participate and influence elections. No

plan will be precleared if it is found to be retrogressive and dilutes minority voting strength compared to existing policies. The no-retrogression standard set by the U.S. Supreme Court is that the electoral position of minority voters cannot be worse than it is under the current districts. Retrogression is most apparent when a district is "packed" with more minority voters than necessary for them to elect a representative of their choice or when minorities are "fragmented" among several districts, diluting their vote in any single district.

Sec. 2 of the act provides a legal avenue for those who wish to challenge existing voting practices on the grounds that they are discriminatory. Sec. 2 applies to all states and can be enforced at any stage in the redistricting process, even after a plan has been precleared under Sec. 5. Sec. 2 prohibits use of voting qualifications or prerequisites to voting or use of any practice that denies or abridges the right of any citizens to vote on account of race, color or language. The burden of proof in Sec. 2 challenges lies not with the government entity submitting the changes, but with the plaintiff challenging the plan. Sec. 2 is violated if, considering the "totality of the circumstances," protected groups have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

The U.S. Supreme Court, in its 1986 decision *Thornburg v. Gingles*, 478 U.S. 30, established a three-part test that plaintiffs must meet when charging vote dilution: 1) the protected group must be sufficiently large and geographically compact to constitute a majority in a single-member district; 2) the group must be politically cohesive; and 3) the white majority must vote in a bloc to defeat the minority-preferred candidate in most circumstances.

A plan could be precleared under Sec. 5 and still not meet Sec. 2 standards. For example, the retrogression standard set out in Sec. 5 sets *existing* minority voting strength as the benchmark for determining retrogression. Plans that improve the situation of protected minorities only slightly or that leave matters as they were would not be retrogressive, yet could still be held to violate Sec. 2, based on discriminatory results.

ANALYSIS:

CSHB 1 would draw the boundaries for 30 Texas congressional districts, three more than now exist. Minority-group residents would be in the majority in the three new districts. District 28, in South Texas, would have a Hispanic majority of 60.4 percent and a total minority-group population of 68.9 percent. District 29, in Harris County, would be 10.2 percent black and 60.6 percent Hispanic, for a total minority population of 70.2 percent (the combined minority percentages are from available census statistics and do not always add up). District 30, in Dallas County, would have a combined minority population of 66.6 percent: 46.9 percent black and 20.5 percent Hispanic.

**Congressional Districts**

**Existing Districts (Current Incumbent)**
**With Greatest Deviation From the Ideal**

| Above Ideal | | | Below Ideal | | |
|---|---|---|---|---|---|
| District Number | Deviation | Minority Percentage | District Number | Deviation | Minority Percentage |
| 26 (Armey) | +58.06 | 15.1 | 18 (Washington) | -20.58 | 76.5 |
| 7 (Archer) | +38.39 | 21.3 | 20 (Gonzalez) | -12.09 | 77.6 |
| 10 (Pickle) | +29.12 | 31.5 | 13 (Sarpalius) | -7.83 | 18.0 |
| 3 (Johnson) | +26.01 | 14.0 | 19 (Combest) | -6.42 | 35.9 |
| 6 (Barton) | +24.58 | 18.2 | 25 (Andrews) | -2.79 | 46.6 |

**Proposed Districts**

All the proposed congressional districts have a population of 566,217, resulting in no deviation.

## Minority Congressional Districts

### Existing Black-Influence (>20 percent) Districts (1990 Census)

| District Number | Total Population | Voting Age |
|---|---|---|
| 18 (Washington) | 35.1% | 35.2% |
| 24 (Frost) | 29.4 | 27.9 |
| 25 (Andrews) | 24.1 | 23.0 |
| 5 (Bryant) | 22.1 | 20.5 |
| 9 (Brooks) | 21.6 | 19.8 |

### Proposed Black-Influence (>20 percent) Districts (1990 Census)

| District Number | Total Population | Voting Age |
|---|---|---|
| 18 | 51.1% | 48.8% |
| 30 | 46.9 | 44.9 |
| 25 | 26.9 | 24.8 |
| 9 | 21.7 | 19.8 |

## Existing Hispanic-Majority Districts (1990 Census)

| District Number | Total Population | Voting Age |
|---|---|---|
| 15 (de la Garza) | 76.9% | 72.5% |
| 20 (Gonzalez) | 69.7 | 65.0 |
| 16 (Coleman) | 68.4 | 64.4 |
| 27 (Ortiz) | 66.7 | 61.9 |
| 23 (Bustamante) | 59.3 | 55.2 |

## Proposed Hispanic-Majority Districts (1990 Census)

| District Number | Total Population | Voting Age |
|---|---|---|
| 15 | 73.7% | 69.9% |
| 16 | 70.4 | 66.4 |
| 27 | 66.7 | 61.9 |
| 23 | 62.5 | 58.3 |
| 20 | 60.8 | 56.1 |
| 28 | 60.4 | 56.4 |
| 29 | 60.6 | 55.3 |

## Existing Combined-Minority Majority Districts (1990 Census)

| District Number | Total Population | Voting Age |
|---|---|---|
| 20 (Gonzalez) | 77.6% | 73.2 |
| 15 (de la Garza) | 77.2 | 72.9 |
| 18 (Washington) | 76.5 | 71.5 |
| 16 (Coleman) | 71.8 | 67.8 |
| 27 (Ortiz) | 68.9 | 64.2 |
| 23 (Bustamante) | 64.3 | 60.2 |
| 24 (Frost) | 50.2 | 45.9 |

## Proposed Combined-Minority Majority Districts (1990 Census)

| District Number | Total Population | Voting Age |
|---|---|---|
| 15 | 74.6% | 69.8% |
| 16 | 73.7 | 69.8 |
| 29 | 70.2 | 64.5 |
| 28 | 68.9 | 65.1 |
| 27 | 68.9 | 64.2 |
| 30 | 66.6 | 62.5 |
| 20 | 66.0 | 61.3 |
| 18 | 65.7 | 61.8 |
| 23 | 65.3 | 61.1 |

NOTES: HB 71 by Uher, the congressional redistricting bill introduced in the first called session, passed the House by 72-63 on August 7 but died when the Senate committee of the whole took no action. Neither house approved a congressional redistricting bill during the regular session.